

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

IN RE: PETITION TO SET ASIDE
NOMINATION PAPERS OF
JOSEPH BELTRANTE, IV,
Plaintiff

No. 2013-SU-915-25

APPEARANCES:

MARGARET RUTH HILL-GRIGSON
CHARLOTTE EDITH BERGDOLL
Pro Se Petitioners

JOSEPH BELTRANTE, IV
Pro Se Respondent

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OPINION GRANTING PETITION TO SET ASIDE NOMINATION PAPERS

Petitioners Margaret Ruth Hill-Grigson and Charlotte Edith Bergdoll, qualified electors and members of the Democratic Party, filed a Petition to Set Aside Nomination Papers of Joseph Beltrante, IV, on March 19, 2013. The Petition sought to remove Mr. Beltrante from being offered as a candidate for Mayor in the upcoming Democratic Primary Election. Upon review of the pleadings in this case, the testimony presented at the hearing on this matter, the exhibits admitted, and the applicable law, the Petition is hereby GRANTED.

Facts and Procedural History

On March 19, 2013, Petitioners filed a Petition to Set Aside Nomination Papers seeking to remove Mr. Beltrante as a candidate for the upcoming local primary election. Petitioners allege that Mr. Beltrante is not a residence of York City and is therefore not qualified to run as Mayor. Specifically, Petitioners argue that Respondent does not reside as he claims at 620 South Queen Street in York City but that he resides at 708 Aslan Drive in Manchester County. The Court scheduled a hearing on the matter by Order dated March 20, 2013 and the hearing was held on March 26, 2013.

Petitioners presented no testimony in their case, although Ms. Bergdoll did testify on rebuttal, and certain exhibits were admitted into evidence without objection. Petitioners' Exhibit 1 established that Mr. Beltrante has only voted once in the County and that he voted in Manchester Township on November 6, 2012, Exhibit 2 contained additional voter records, Exhibit 3 describes Homestead Act Exclusions and Exhibits 4 & 5 establish that Mr. Beltrante took a Homestead Act Exclusion on his property located at 708 Aslan Drive, Manchester Township, York County, and not at his property located at 620 South Queen Street, York City.

Respondent testified himself, presented testimony from an individual who had visited him on several occasions at the 620 South Queen Street address,

and Respondent's wife testified about Mr. Beltrante's living situation. Mr. Beltrante's exhibits were admitted into evidence without objections. Exhibit A is a Verizon bill addressed to Mr. Beltrante at the 620 South Queen Street address dated October 11, 2012. Exhibit B is a Met-Ed bill addressed to Mr. Beltrante at 620 South Queen Street and the last charge on the bill is dated August 30, 2012. Exhibit C are letters from Columbia Gas dated September 17 and November 18, 2012 and a bill dated November 7, 2012, all addressed to Mr. Beltrante at 620 South Queen Street. Exhibit D is Mr. Beltrante's car registration, valid February 26, 2013, with the address of 620 South Queen Street, and his car insurance policy, effective December 2, 2012, with his address as 620 South Queen Street. Exhibit E is a letter to the York County Assessment Office, certain Army documents, and a document changing his Homestead exception to the 620 South Queen Street property dated March 20, 2013. Exhibit F provides his Federal Tax Returns for 2011 and 2012 where 620 South Queen Street is identified as his address. Exhibit G includes letters to the Fire Department and Exhibit H includes Magisterial District Judge dockets.

Both Parties also provided argument in support of their positions. Upon review of the pertinent evidence and applicable law, and within the strict time constraints imposed by the Election Code, the Court will now issue an opinion and order disposing of the matter.

Issue Presented

Whether Joseph Beltrante, IV, meets the residency requirements as established in York City Ordinance Article 123.02 and is qualified to be placed on the primary ballot for election to the position of Mayor of York City.

Discussion

Article 123.02 of the York City Ordinances provides that a candidate for Mayor "shall be at least twenty-one years of age, shall have been a resident of the City throughout one year immediately preceding his election and shall reside in the City throughout his term of service." Respondent is over 21 years of age. At issue is whether Respondent has resided in York City throughout the year preceding the election.

In *In re Lesker*, 377 Pa. 411 (1954), the Supreme Court considered the meaning of the terms "inhabitant" and "reside" in the context of the Article 2, Section 5, of the Pennsylvania Constitution. Article 2, Section 5, sets forth the qualifications to become a member of the Pennsylvania Senate and requires potential members to be inhabitants of Pennsylvania for four years and requires elected members to reside in their respective districts during their service. The opinion also addressed the residency requirements for judges. The Supreme Court concluded that "[t]here can be no doubt...that in order to qualify under

Article 2, Section 5 of our present Constitution a candidate for assemblyman must be an inhabitant (a permanent resident) within his claimed legislative district; and he must have resided there, that is, maintained a permanent home establishment there, for at least a year." *Id.* at 416. The Supreme Court determined that while someone can be said to "reside" in two places, "[i]n point of law, however, only one of these places can be his permanent legal residence, that is, his domicile." *Id.* The Supreme Court clarified that while residence is generally a matter of intent, "[i]n the law of domicile, intent is the *actual* state of facts, not what one declares them to be. One may even believe he is expressing intent and yet this expression would not be enough to establish the domicile or permanent abode which makes up legal residence in the law." *Id.* (emphasis in text).

The Supreme Court held that Mr. Lesker's residence was at 1814 Brownsville Road and not at 4334 Brownsville Road. The Court based their conclusion on the fact that Mr. Lesker had never abandoned the 1814 Brownsville Road property, that his personal belongings, furniture, etc. were still at the 1814 Brownsville Road property, that his wife "still attends to her domestic duties there," that he voted from the residence, and that he received friends at the residence. *Id.* at 418-419. The Supreme Court also stated that the "almost conclusive criterion of domicile is the *animus manendi*. There must be the intention to *remain*." *Id.* at 419. Mr. Lesker had not evinced an intention to

remain at 4334 Brownsville Road and the 1814 Brownsville Road address was determined to be his residence for the purposes of the election law.


In the present case, Mr. Beltrante has been unequivocal about his intention to leave the 620 South Queen Street property as soon as it can be leased and return to his wife and children at 708 Aslan Court. Mr. Beltrante has consistently stated that he does not want to live in York City. In addition, Mr. Beltrante has testified that he is only living at 620 Queen Street because it is an investment property that he believes needs to be protected from vandals. Mr. Beltrante clearly and admittedly does not intend to remain in the 620 South Queen Street Property. Further, Mr. Beltrante's wife and child currently live at the 708 Aslan Court property, Mr. Beltrante and his wife are not separated nor are they seeking divorce. Mr. Beltrante received a Homestead Exemption on the 708 Aslan Court property from February 3, 2005 through March 20, 2013, and Mr. Beltrante voted in Manchester Township during the general election in 2012. The Court therefore determines that Mr. Beltrante's is domiciled at 708 Aslan Court, Manchester Township, York County, because it is the fixed, final and permanent home to which he intends to return. While it could be said that Mr. Beltrante also resides at 602 South Queen in York City, a person can have only one domicile at a time and the 602 Queen Street property is a momentary abode

that Mr. Beltrante is inhabiting for the specific purpose of protecting and leasing the property and is not, therefore, his permanent residence and domicile.

Conclusion

In conclusion, the Court will **GRANT** the Petition to Set Aside Nomination Papers filed on March 19, 2013. An Order consistent with this Opinion will be entered.

BY THE COURT,

A handwritten signature in black ink, appearing to read 'Stephen P. Linebaugh', written over a horizontal line.

Stephen P. Linebaugh, President Judge
19th Judicial District of Pennsylvania

Dated: _____

3/27/13